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May 18, 1955
Opinion No. 55-121

REQUESTED BY: J. Morris Richards, Chairman
Arizona Development Board
P. O. Box 151
Winslow, Arizona

OPINION BY: ROBERT MORRISON, The Attorney General
H. B. Daniels, Assistant Attorney General

QUESTION: Can the Arizona Development Board use funds appropriated to it in a lump sum appropriation for the purpose of entertainment?

CONCLUSION: Yes, provided such entertainment is for a public purpose.

Under Article 8, Chapter 4, ACA, 1939, as amended, the Legislature created and organized the Arizona Development Board, defining its purposes, duties and powers requiring an annual audit and report. Section 4-803 spells out the purpose of this agency as follows:

"Purposes. -- The purposes and objectives of the board shall be to attract tourist, new residents and new commercial industries to Arizona, and generally promote such tourist, population and industry development of the state; to advertise and further the development and use of the resort and recreational advantages and facilities of all areas of Arizona on a year-round basis; to explore and publicize Arizona's facilities, resources and possibilities in order to attract new capital and new industries to the state." (Emphasis supplied)

The plain purpose of this provision is to establish a public relations department of the state. This agency is empowered and authorized to "utilize any and all media of communication, publication and exhibition in the dissemination of information, advertising and publicity in any field of its purposes, objectives or duties." Section 4-805, ACA, 1939, as amended, 1952 Supp. The determination of this issue is dependent upon what construction and interpretation is placed upon the term "public purpose".

The conservative view is expressed in Proctor v. Hunt, 1934, 43 Ariz. 198, and its companion case, Valley Bank & Trust Co. v. Proctor, 1936, 47 Ariz. 77, where the Court held that the Governor's entertainment of his friends while on official business was not for a public purpose. The facts in these cases, however, are distinguishable from the question now before us. The ultra-conservatism

of the Court was clearly expressed in City of Phoenix v. Michael, 1944, 61 Ariz. 238, in holding that there was no express authority given the city fathers to expend money for payment of assessments and dues to the Arizona Municipal League, such expenditures not being for a public purpose. This strict interpretation of the concept of public purpose has been decidedly changed by the Arizona Courts.

In City of Glendale v. White, 1948, 67 Ariz. 230, the Supreme Court overruled City of Phoenix v. Michael, supra. The Court said, in allowing the City to pay assessments and dues to the Arizona Municipal League:

"We have reached the conclusion that the majority opinion in the Michael case forbidding municipalities in all events from availing themselves of the services of the Arizona Municipal League is wrong as it represents an ultra conservative view of the actualities confronting municipalities in these modern times." (Emphasis supplied)

The liberalism of the Arizona Court is further buttressed by the case of People v. Bunge Bros. Coal Co., 392 Ill. 153, 64 N.E. 2d 365, 371, which permitted a freer use of the taxpayers' money. See 169 A.L.R. 1218, 1233. Public purpose is broadened by the Court in other cases. See City of Tombstone v. Macia, 30 Ariz. 218; Frohmler v. Board of Regents, 64 Ariz. 362; City of Tucson v. Sunshine Club, 64 Ariz. 1; Board of Regents v. Frohmler, 69 Ariz. 50. In the latter case, the Court recognized that the interpretation of the term "public purpose" must be a flexible and adjustable one. The Court said, at page 58:

"* * * What is "a public purpose" depends in part upon time (age), place, objects to be obtained, modus operandi, economics involved, and countless other attendant circumstances. The phrase is incapable of fixed definition; * * * One of the attendant circumstances referred to has its seat in the human equation --- the eyes, conscience, and philosophy of those called upon to judge. * * *" (Emphasis supplied)

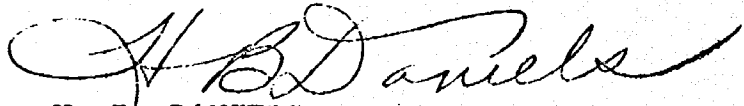
The Court went on to hold that expenditures for inaugural ceremony of the president of the University of Arizona were proper claims and fall in the category of expense for a "public purpose". We think this broad, liberal point of view must be applied in the case of expenditures of public funds by the Development Board. We, therefore, conclude that in order to give purpose and effect to the legislative intent in establishing this agency, some funds must be allowed to the Secretary-manager for the purpose of entertaining those who are interested in investments in Arizona.

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Considering the time, our modern age, the place, the object to be gained, developing the entire state, the modus operandi and economics involved, we think that expenditures of this kind are for a public purpose. The public purpose, of course, must clearly appear on the face of any claim submitted to the Auditor.

ROBERT MORRISON
The Attorney General

A handwritten signature in cursive script, appearing to read "H. B. Daniels".

H. B. DANIELS
Assistant Attorney General

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